

May 1, 2000

OPINION NO. 2000-026

The Honorable Joseph R. Burkard
Paulding County Prosecuting Attorney
112 North Water Street
Paulding, Ohio 45879

Dear Prosecutor Burkard:

You have requested an opinion concerning the authority of a county hospital operating in Ohio pursuant to R.C. Chapter 339 to establish a medical office in another state for a doctor who is an employee of the county hospital. In order to answer your question, let us begin by examining the statutory scheme governing county hospitals.

Pursuant to R.C. 339.01(B):

A board of county commissioners may purchase, acquire, lease, appropriate, and construct a county hospital or hospital facilities thereof. After a county hospital or hospital facilities have been fully completed and sufficiently equipped for occupancy, any subsequent improvements, enlargements, or rebuilding of any such facility shall be made by the board of county hospital trustees or a hospital commission appointed pursuant to [R.C. 339.14].¹

The General Assembly has specifically authorized a board of county commissioners, board of county hospital trustees, or hospital commission to establish “an outpatient health facility in another county to serve as a branch of the county hospital.” R.C. 339.01(C). You question whether R.C. 339.01(C) authorizes the establishment of such a county hospital branch in a county located

¹ R.C. 339.14 provides for the establishment of a county hospital commission, which, among other things, “may take all steps necessary for the acquisition or construction, equipment, enlarging, rebuilding, or other improvement, of hospital facilities and may request the board of county commissioners to submit to the electors of the county, in the manner provided in [R.C. Chapter 133], a bond issue to cover the costs of hospital facilities, as defined in [R.C. 140.01].” R.C. 339.14(D).

outside the state of Ohio. For the reasons that follow, we find that R.C. 339.01(C) does not provide such authority.

It is a fundamental rule of statutory construction that a statute must be read as part of the statutory scheme in which it is included. *See Gough Lumber Co. v. Crawford*, 124 Ohio St. 46, 48-49, 176 N.E. 677, 677 (1931) (“[i]t is our duty to so construe statutes and parts thereof that the same may be reconciled and held harmonious, if this can be done and their intent and purpose be maintained”); *Eggleston v. Harrison*, 61 Ohio St. 397, 404, 55 N.E. 993, 996 (1900) (“acts upon the same subject are to be construed as a whole with reference to an entire system of which all are parts”). We must, therefore, examine the statutory scheme governing the establishment and operation of county hospitals under R.C. Chapter 339.

Let us begin with R.C. 339.091, which states in pertinent part:

Before the board of county commissioners, board of county hospital trustees, or county hospital commission may enter into an initial agreement for the acquisition, operation, or lease under [R.C. 140.03, R.C. 140.05, R.C. 339.09, or R.C. 339.14] of a county hospital operated by a board of county hospital trustees under [R.C. 339.06], the board of county commissioners shall review the agreement. If it finds that the agreement will meet the *needs of the residents of the county for hospital service*, the board of county commissioners may adopt a resolution authorizing the board of county commissioners, board of county hospital trustees, or county hospital commission to enter into the agreement; however, authorization to enter into the agreement shall become effective only if approved by the electors of the county pursuant to [R.C. 339.092]. (Emphasis added.)

Thus, the authority to enter into an initial agreement for the establishment of a county hospital to be operated by a board of county hospital trustees under R.C. 339.06 requires, among other things, a finding by the board of county commissioners that “the agreement will meet the needs of the residents of the county for hospital service,” R.C. 339.091. By conditioning the authority to establish a county hospital operated by a board of county hospital trustees upon a finding that an agreement to do so will meet the county residents’ needs for hospital service, the General Assembly has clearly defined the purpose for which such a county hospital may be established.

The procedure for notice and approval of a proposal to locate a county hospital branch in another county is established by R.C. 339.01(C), which states in pertinent part:

(1) A board of county commissioners, board of county hospital trustees, or hospital commission may purchase, acquire, lease, appropriate, or construct an outpatient health facility in *another county* to serve as a branch of the county hospital. The outpatient health facility *may include office space for physicians. The facility shall be operated pursuant to the law that regulates the operation of the county hospital.* A board of county hospital trustees or a hospital commission that proposes to establish such a facility shall give written notice to its board of county commissioners and to the board of county commissioners of the county where the

facility is to be located. *The board of county commissioners where the facility is to be located, by resolution adopted within forty days after receipt of the notice, may object to the proposed facility.* The resolution *shall include an explanation* of the objection and may make any recommendations the board considers necessary. The board *shall send a copy* of the resolution to the board of county hospital trustees or the hospital commission and to the board of county commissioners of the county that proposes to locate the facility in the other county.

(2) Except as provided in division (C)(3) of this section, the board of county hospital trustees or the hospital commission may establish and operate the facility, unless the board of county commissioners of the county proposing to locate the facility in the other county, not later than twenty days after receiving a resolution of objection from the other county's board of county commissioners pursuant to division (C)(1) of this section, adopts a resolution denying the trustees or commission the right to establish the facility. (Emphasis added.)

R.C. 339.01(C)(1) thus authorizes “the board of county commissioners where the facility is to be located,” through the adoption of a resolution within a fixed time period, to object to the establishment of the county hospital branch in its county. R.C. 339.01(C)(1) further imposes specific requirements upon the board of county commissioners where the facility is to be located with respect to the contents of the resolution and the forwarding of copies of that resolution. Because the General Assembly possesses no authority to impose duties upon public officers or subdivisions of another state,² only the commissioners of a county in the state of Ohio are subject to the duties imposed by R.C. 339.01(C)(1) upon “the board of county commissioners where the facility is to be located.” The statutory scheme governing the establishment and operation of county hospitals thus indicates that R.C. 339.01(C)(1) authorizes a board of county commissioners, a board of county hospital trustees, or a county hospital commission to “purchase, acquire, lease, appropriate, or construct an outpatient health facility in another county,” but only in another county within the state of Ohio.

This construction of R.C. 339.01(C)(1) comports with the traditional understanding of the powers conferred upon counties by R.C. Chapter 339 for the care of county residents. For example, 1939 Op. Att’y Gen. No. 1311, vol. III, p. 1941, considered the extent of the county commissioners’

² See generally *Woodard v. Michigan S. & N. Indiana R.R.*, 10 Ohio St. 121, 122 (1859) (“[g]eneral words in statutes must always be construed in view of the territorial limit to the powers of the legislature. The legislature of Illinois did not intend to provide as to acts of negligence not occurring in that state, and did not intend to impose a trust or duty upon officers not appointed or acting under its laws. It is clear, that an effort of the kind, had it been made, could have availed nothing beyond the limits and jurisdiction of that state”); *Minnesota v. Karp*, 84 Ohio App. 51, 56-57, 84 N.E.2d 76, 79 (Hamilton County 1948) (“jurisdictions of all governments are geographical or territorial. Any attempt to exercise extraterritorial jurisdiction constitutes an invasion of another sovereignty.... The jurisdiction of a state ... must be confined to persons, property and activities within its boundaries”).

authority under G.C. 3138-1 (now R.C. 339.11) to contract with a charitable hospital “in any county” for the care of the indigent sick. The opinion considered whether the authority to contract with a charitable hospital “in any county” included the power to contract with such a hospital located in a county outside the state of Ohio, and stated at 1942 and 1943:

A consideration of the status and functions of counties appears to be helpful in a search for the answer to the above question.

Counties are subdivisions of the state for governmental purposes and in this respect are nothing more than certain portions of territory into which the state is divided for more convenient exercise of the powers of government....

....

The state, therefore, being the political entity and the county nothing more than a territorial part of the state and a mere agency of state government to be in no sense regarded as a separate political unit, it would seem that the Legislature, if it intended to authorize county commissioners to contract with any county located in a foreign state, would necessarily have said “in any state”, rather than that which it did say.

1939 Op. Att’y Gen. No. 1311, vol. III, p. 1941, thus, concluded that the General Assembly’s reference to a charitable hospital “in any county” referred to only those charitable hospitals located within Ohio. *See also* 1929 Op. Att’y Gen. No. 1198, vol. III, p. 1780 (syllabus, paragraph two) (“[c]ounty commissioners have no authority to contribute to the expense of maintaining a tubercular resident of the county in a hospital outside the state, irrespective of whether such person is indigent or otherwise”).

Finally, we note that, in those instances in which the General Assembly has intended that governmental entities have authority to operate beyond the boundaries of the state, it has expressly so provided. *See, e.g.*, R.C. 9.60(B) (“[a]ny firefighting agency or private fire company may contract with any state agency or instrumentality, county, or political subdivision of this state or with a governmental entity of an adjoining state to provide fire protection, whether on a regular basis or only in times of emergency, upon the approval of the governing boards of the counties, firefighting agencies, political subdivisions, or private fire companies or the administrative heads of the state agencies or instrumentalities that are parties to the contract”); R.C. 306.80 (stating in part, “[o]ne or more contiguous counties of this state, or one or more municipal corporations which are in the same county or in contiguous counties, any one of which is adjacent to another state, may enter into an agreement, to the extent and in the manner authorized by the laws of the United States, with entities or instrumentalities of government of other states or of the United States, to provide for the creation of a regional transit commission which will provide services and facilities for a service area within this state and within one or more states adjacent to this state, for the transportation of persons in a manner that will be in the best public interest in view of the geographic, economic, population, and other factors influencing the needs and development of such service area”); R.C. 307.63(D) (stating, “[t]he board of county commissioners may enter into agreements with this state, political subdivisions of this state, an adjoining state or any of its political subdivisions, or any other public entity concerning the use of the countywide public safety communications system”); R.C. 6135.20

(“[t]he board of county commissioners of any county in this state, in which are located owners and lands affected and charged for the improvement or construction of a ditch, drain, or watercourse, as provided by law, may cause to be performed any work which is assigned to them outside of the limits of this state in a like manner as under the laws for similar duties, if the necessary privilege to do so has been granted by the legislature of the state where said lands are located through which such work is to be constructed”). Because R.C. 339.01(C)(1) does not mention the establishment of a county hospital branch outside the state of Ohio, we conclude that the General Assembly does not intend that a county hospital branch be so established.

We are aware that in this instance the county hospital wishes to provide medical services for persons who reside within a state adjacent to Ohio. The current language of R.C. 339.01(C)(1), however, compels us to advise you that such action on the part of the county hospital is not permitted. Should the General Assembly determine that Ohio’s county hospitals should have such authority, however, it may suitably amend R.C. 339.01(C)(1) for that purpose.

Based upon the foregoing, it is my opinion, and you are hereby advised that R.C. 339.01(C)(1) does not authorize a board of county commissioners, board of county hospital trustees, or hospital commission to purchase, acquire, lease, appropriate, or construct an outpatient health facility in a county outside the state of Ohio.

Respectfully,

BETTY D. MONTGOMERY
Attorney General

May 1, 2000

The Honorable Joseph R. Burkard
Paulding County Prosecuting Attorney
112 North Water Street
Paulding, Ohio 45879

SYLLABUS:

2000-026

R.C. 339.01(C)(1) does not authorize a board of county commissioners, board of county hospital trustees, or hospital commission to purchase, acquire, lease, appropriate, or construct an outpatient health facility in a county outside the state of Ohio.